REMARKS

The examiner made the last office action final due to the communication filed on 5/13/04.

In a telephone interview with the examiner on August 31, 2004, the undersigned gave reasons why the finality of the office action should be withdrawn. Specifically, the undersigned indicated that a final action was premature because the examiner furnished a new rejection based on new art, which was not necessitated by applicants amendment of the claims in the prior reply nor based on an Information Disclosure Statement submitted during the time period set forth in 1.97(c). (See MPEP 706.07(a))

Accordingly, Applicant requests withdrawal of the finality of the rejection.

During the same telephone interview, applicant also questioned the restriction requirement. Specifically, the examiner advanced a basis for restriction that the newly added claims recitation of "receipt of a query" and "sending an actual answer message as the actual availability answer in response to the query" made the newly added claims independent and/or distinct from the claims originally claimed.

Applicant pointed out that, in general, responses including availability information are often sent in reply to a query for availability information. Applicant did not mean to imply that it would amend the claims to replace "query" with "response." Such an amendment would not be correct. Applicant did point out to the examiner that "query" is used in the non-restricted claims. For instance, again applicant directs the examiner's attention to originally filed claims 13 and 15. In essence, the search required for the newly added claims and that for the elected claims is the same. Rather, than defining independent and distinct inventions or combination sub-combination invention, the claims merely recite different scopes of invention. Accordingly, the basis for the restriction requirement is without merit.

Nevertheless, Applicant has amended claim 21 to delete "receive a query for seating availability; and in response to the query" and the other recitations involving "query." Clearly, now these claims are consonant with the originally filed claims and are merely directed to a different statutory class of invention.

The examiner having failed to show distinctiveness between different classes of invention, Applicant submits that the claims rightfully belong in the application and the restriction was improper.

Applicant has also made corresponding amendments to claims 22, 23, and 25 and has canceled claim 31 to make the remaining claims consistent with claim 21, as now presented.

Prior Art Rejections

The examiner rejected Claims 1-3, 5-10, and 14-19 under 35 U.S.C. 103(a) as being unpatentable over Walker et al., U.S. Patent 5,897,620, and further in view of Talluri, U.S. Patent 6,263,315.

Claim 1 is directed to an availability prediction system that predicts relative, competitive availability of seating on an airline flight. Walker et al., U.S. Patent 5,897,620 does not disclose an availability prediction system, as contended by the examiner. Rather, Walker et al., U.S. Patent 5,897,620 discloses a conventional revenue management system. As set out in Applicant's specification, a revenue management system is the source of availability information and not a system that predicts relative, competitive availability of seating.

Neither Walker et al., U.S. Patent 5,897,620 nor Talluri, U.S. Patent 6,263,315, address the subject matter of claim 1. Claim 1 allows a user is to predict what a competitor's availability answer for an airline seat would be in response to a query for seat availability on that competitor's flight. Claim 1 allows a user airline, for instance, to adjust an answer that it would otherwise send in response to a query based on what it, the user airline, determines that its competitor might do.

In addition, the references do not suggest decision logic that compares the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability. The examiner considers Talluri as teaching this feature.

However, Talluri, like Walker, is directed to a revenue management system to accept or deny requests for resource capacity, e.g., the actual availability system element of claim 1. Talluri does not suggest the decision logic that that compares the predicted answer from the

availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability. In that sense, Talluri is cumulative with the teachings of Walker.

Applicant contends that these teachings have nothing to do with a system including decision logic that compares the predicted answer from the availability predictor (which is predicting what the competitor will answer with) and a potential answer from the availability system to establish a decision with respect to actual availability. The thresholds and values in the Talluri reference are not predicted answers from the availability predictor and potential answers from an availability system. Rather, the thresholds are merely values that are used in a lookup process to arrive at actual availability responses. Moreover, in Talluri, there is not any suggestion to incorporate any information regarding values of a competitor.

Claims 2-16, which depend directly or indirectly on claim 1, are allowable at least for the reasons discussed in claim 1. Moreover, these claims add additional distinctive features.

Claim 17 is also distinct over the references. Claim 17 recites ... receiving ... an actual availability response for a flight and comparing the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability. The references do not suggest at least these features of claim 17.

The references do not suggest ... executing in the computer system an algorithm to predict the seating availability on a competitive flight. The references do not describe or suggest features of a competitive situation where one party, e.g., a user of the method, would attempt to predict how a competitor might respond in order for the user to consider an adjustment, (e.g., "to establish a decision with respect to actual availability") to an actual availability response for a flight. Claims 18-20, which depend directly or indirectly on claim 17, are allowable at least for the reasons discussed in claim 17.

Claims 21-32 also are distinguished over the references. Claim 21 for instance recites instructions for causing a computing device to produce a potential, actual availability response for a flight, predict seating availability on a competitor's flight that is a competitive flight to the flight and produce a predicted answer. Claim 21 also requires instructions to compare the

predicted answer and the potential availability answer ... to establish an actual answer message with respect to seat availability... .

Claims 22-32, which depend directly or indirectly from claim 21, add additional distinctive features.

The examiner rejected Claim 4 under 35 U.S.C. 103(a) as being obvious over Walker '620, in further view of Talluri, '315, and further in view of Lynch et al., U.S. Patent 6,018,715.

Claim 4 is allowable at least for the reasons discussed above. In addition, the art is seen as neither describing nor suggesting that the decision logic determines whether the prediction from the availability predictor indicates that a competitor is in a more favorable or less favorable competitive position than the answer produced by the availability system. Again, none of the references deal with this type of scenario.

The examiner rejected Claims 11-13 and 20 under 35 U.S.C. 103(a) as being unpatentable over Walker '620, further in view of Talluri, '315, and further in view of Lynch et al., U.S. Patent 6,119,094.

Claims 11-13 set out various scenarios regarding the decision logic. Claim 11 tests whether the competitor's available booking codes are at a lower price than those that the availability system indicates the user of the system can offer. Claim 12 tests if the competitor's available booking codes are not at a lower price, then the system can return a bias towards making the seat unavailable. Claim 13 tests if not at a lower price, then the system can test whether an original query was for a low cost fare and return a bias towards making the seat not available if the original query was for a low fare (claim 13). These features and those of claim 20 are not suggested by the references.

The fact that applicant has not responded to any stated position of the Examiner should not be construed as a concession by applicant of those positions. The inclusion by applicant of arguments for patentability should not be construed as a concession by the applicant that there are not other good reasons for patentability of these claims or other claims.

This Reply is accompanied by a Notice of Appeal. Applicant had previously paid a Notice of Appeal fee on July 30, 2003 and paid a corresponding fee for filing of an Appeal Brief.

Applicant believes no fee is due. If, however, a Notice of Appeal fee is due, please charge deposit account 06-1050 referencing Attorney Docket No. 09765-015001.

Respectfully submitted,

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